

MEMORANDUM OF LAW

DATE: January 19, 1994

TO: Larry B. Grissom, Retirement Administrator

FROM: City Attorney

SUBJECT: Industrial Disability Retirement Application of
Theodore Blake

The Retirement Board of Administration has asked whether a denial of a hearing on Theodore Blake's application for an industrial disability retirement was contrary to the applicant's right to due process.

In his statement to the Board at the September meeting, the applicant raised a question of fact about the cause of his disability. Applicant should be granted a hearing to resolve this disputed question of fact.

ANALYSIS

Facts

Theodore Blake submitted an application for an industrial disability retirement on May 5, 1993. The matter was calendared before the Retirement Board of Administration on September 17, 1993, with a recommendation to deny the application, as it appeared from the medical records that the disability was caused by nonindustrial factors.

On September 17, 1993, Mr. Blake spoke to the Board. He described work conditions which he believed caused his inability to work. In particular, he described heart problems he had in December, 1991; he returned to work after that episode and, within the first week he was back at work, he was ordered to walk long distances to perform his work. Mr. Blake claimed that this excessive walking caused a heart attack, forcing him to leave work. He said that he could have and would have continued to work as a Senior Drafting Aide, but for the job requirements of excessive exertion, and that it was this excessive exertion which caused his inability to work.

The matter was continued by the Board, and the Board requested an additional medical report from Mr. Blake's treating physician. The physician submitted a short summary of his previous findings, stating that the "incapacity is exacerbated by

his employment and stress due to the job, however, it does not appear that this is due to his employment." The physician did not discuss Mr. Blake's specific working conditions immediately before he left his job.

Mr. Blake did not submit any evidence other than his own testimony to support his claims that excessive demands on the job caused his disability. The medical reports and other documents in the file neither support nor disprove Mr. Blake's claims.

Those claims have not been thoroughly fleshed out and examined. Mr. Blake presented his claims in his oral statement to the Board; however, it is not the Board's function to consider, analyze and weigh all the evidence to reach a finding on each application. Mr. Blake is not represented by an attorney, and he may not have been fully informed of the limited nature of the full Board meeting, or of his responsibility to provide supporting evidence to staff.

Applicable Law

Judicial due process requires that a pension applicant be given a hearing whenever entitlement to a pension turns on a disputed question of fact. *Thompson v. City of San Diego*, 43 Cal. 3d 1033, 1038 (1987). Mr. Blake has inartfully and incompletely raised a question of fact. He is not represented by an attorney. The Board should safeguard his rights by making sure he has an adequate opportunity to present all facts supporting his position.

Board Rules

You also noted that it is staff's understanding that a hearing is required only when there is a conflict in the facts before the Board. That comports with judicial precedent, as stated in *Thompson*, *supra*.

The current Board rules are not so clear. Board Rule 15a.4. provides in part:

Secretary shall make recommendations to Board as follows:

a. If, from the medical reports and other documents submitted, and from the information contained in the official records of Board, there is no conflict in the facts necessary to grant the application and if Secretary is satisfied that the applicant is permanently incapacitated physically or mentally for the performance of his duties in the service; ¶the

Secretary shall recommend that applicant be retired for disability.

. . . .

c. When the medical reports and other documents submitted and the information in the official records of Board are in conflict or if Secretary is not satisfied with the reports and documents submitted, he shall make no recommendation as to disposition of the application but shall submit the application, medical reports, and all other documents and information concerning the application to a Board Adjudicator to conduct a hearing (Emphasis added.)

The rule could be construed to allow recommendations directly to the Board only when the medical reports are not in conflict and the recommendation is to grant a disability application.

Further, Rule 15 provides:

Decisions with respect to applications for service and disability retirements . . . may be made after deliberation. In the event, however, that a decision is made without a hearing and the member affected by such decision is dissatisfied, such decision shall not be final but shall be subject to review upon application of the member affected At all reviews or hearing, such member may be represented by counsel or may conduct his own presentation.

This recitation of the rules shows the value of expeditiously revising the rules. While it is not clear that the "review" provided by Rule 15 is the same as an adjudicator hearing, it would be beneficial to permit Mr. Blake to present his views.

Also, the applicant could argue that the official records of the Board now contain conflicting facts, in the form of Mr. Blake's statements at the September meeting, and that conflict would trigger the requirement for an adjudicator hearing.

It appears from his correspondence that Mr. Blake may not have been aware that he bears the burden of proving the facts necessary to show that his disability was a result of injury or disease arising out of or in the course of his employment, or that the Board does not have the ability to investigate all the circumstances of employment which may cause injury or disease.

CONCLUSION

This matter should be set for a hearing before an adjudicator, who has the time and resources to hear and sort out all the claims, and to assess Mr. Blake's credibility. Mr. Blake should be specifically advised that it is his responsibility to provide any and all evidence which supports his claim that his disability is a result of injury or disease arising out of or in the course of his employment.

If you have any questions, please give me a call.

JOHN W. WITT, City Attorney

By

Meagan J. Beale

Deputy City Attorney

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